



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

ELP  
Docket No. 1550-00  
22 November 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149  
(2) Case summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable of discharge than the undesirable discharge issued on 22 November 1943.

2. The Board, consisting of Messrs. Milner and Hogue and Ms. Hare reviewed Petitioner's allegations of error and injustice on 21 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Naval Reserve on 21 November 1942 for two years at age 18. He completed hospital apprentice school and was advanced to hospital apprentice second class (HA2c). He served without incident until 8 July 1943 when he was admitted to a naval hospital with a diagnosis of "constitutional

psychopathic state, emotional instability", as he was nervous, unable to carry out his duties, or meet the demands of the service.

c. The medical record on 12 July 1943 noted that Petitioner had been put on sick call by a medical officer the previous week for a complaint of sweating hands. In discussing this complaint, the medical officer noted Petitioner was tense, anxious and apprehensive, with tremulous hands which were slick with perspiration. The medical officer stated that Petitioner appeared immature and emotionally dependent on his mother to a degree which made Navy life a considerable threat to him. Since hospital duty ashore aroused such a degree of anxiety in him, it was inconceivable that he would hold up under more strenuous conditions.

d. During an interview with a medical officer on 6 August 1943, Petitioner stated that he belonged in the hospital because he was afraid he would do something to hurt himself. He expressed a desire to be sent home. His claim of excessive use of alcohol was viewed as a fabrication by the medical officer.

e. On 16 September 1943, in a further interview with a medical officer, Petitioner revealed that he two heterosexual experiences, one at age 17 and another about a year ago with a friend. He claimed that he liked women but was not sexually inclined. He reported that he became excited from hearing other men talk about their sexual experiences and that on a number of occasions during the past two years, he had practiced group masturbation and indulged in sodomy for the past three years.

f. On 17 September 1943, Petitioner appeared before a medical survey board on 17 September 1943 and the diagnosis of "constitutional psychopathic state, emotional instability" was changed to "sexual perversion", a condition that existed prior to enlistment but was not due to his own misconduct. Petitioner was noted to be in a depressed nervous state and afraid the would commit suicide if he was transferred to the USS YOSEMITE. He showed strong homosexual trends on a conscious level and was strongly attached to another patient in the ward. On 20 September 1943 a board of medical survey found Petitioner unfit for service by reason of "sexual perversion." On 22 November 1943, Petitioner received an undesirable discharge by reason of "Board of Medical Survey (unfitness)." Petitioner had no disciplinary actions and his conduct average at the time of discharge was 4.0. No marks in any other traits were assigned during his period of service.

g. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively

separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

i. The basis for Petitioner's discharge, "sexual perversion", was based on his admitted homosexual acts. In accordance with reference (b), an individual separated due to homosexuality receive an honorable or general discharge if there are no aggravating factors.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 22 November 1943, the date of Petitioner's discharge, the Board concludes that it would be in the interests of justice to retroactively apply the standards of reference (b) to Petitioner's case. Using the standards of reference (b), the Board finds that relief in the form of recharacterization to honorable is appropriate given the lack of any aggravating factors and since Petitioner's overall performance was satisfactory.

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of Board of Medical Survey (unfitness) on 22 November 1943 vice the undesirable discharge actually issued on that date. This should include the issuance of a DD Form 214.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 29 February 2000.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director